



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lanier Business Products, Inc.

File: B-240990

Date: January 14, 1991

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Grace Bateman, Esq., Seyfarth, Shaw, Fairweather & Geraldson,
for Dictaphone Corporation, an interested party.
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agency.
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the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. An agency's use of a Federal Supply Schedule vendor's stock number to describe equipment in a Commerce Business Daily notice does not transform all of the equipment's functional capabilities into salient characteristics that an alternative source must address in order to meet the agency's minimum needs.

2. Agency that published in the Commerce Business Daily (CBD) its intention to purchase a particular Federal Supply Schedule telecommunications vendor's equipment off that vendor's non-mandatory schedule contract, properly ordered an alternative source's equipment off that source's schedule contract, after determining that the alternative source's equipment was lower priced and functionally equivalent to the CBD-listed equipment, even though the alternative source's equipment may not have some of the capabilities of the CBD-listed equipment, where the allegedly missing capabilities are not named salient characteristics in the CBD notice or are provided by a different but functionally equivalent approach.

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DECISION

Lanier Business Products, Inc. protests the Department of Veterans Affairs' (VA) order of a Dictaphone Corporation central digital dictation system^{1/} under Dictaphone's General Services Administration, non-mandatory, automatic data processing (ADP) Federal Supply Schedule (FSS) contract No. GS00K9-0AGS0570.^{2/}

We deny the protest.

On July 16, 1990, after discussions with a Lanier representative and a review of detailed Lanier technical specifications, VA published in the Commerce Business Daily (CBD) its intention to place an order against Lanier's FSS contract for a specific list of equipment. These items are components of Lanier's VoiceWriter 1600 central dictation system. Included on that list were: (1) "6-Select Stations W/ID Pad . . . (5 ea)," (2) "Intercom Station . . . (1 ea)," (3) "Uninterrupted Power Supply 350 VA . . . (1 ea)," and (4) "Re-Record Module . . . (1 ea)." Lanier's quoted FSS price for this equipment, including 12 months of maintenance, is approximately \$79,500.

The CBD notice asked interested firms to show their ability to meet VA's requirement by supplying pricing, descriptive literature and their FSS contract in 15 days. On July 31, Dictaphone submitted a proposal offering the Dictaphone Digital Express 7000 System with 12-month maintenance from its

^{1/} A central digital dictation system consists of a central computer (called a digital recorder) and associated management/master console (keyboard and video monitor) linked to multiple remote sites (dictate stations, transcribe stations, and touch-tone telephones). The linkage is effected either directly by cables ("hard-wired") or indirectly through a connection to an existing telephone system. Users at dictate stations in different parts of the hospital and at telephones anywhere can call in dictation to the digital recorder which converts the user's analog voice input (i.e., dictation) into digital data storable on the digital recorder's hard disk. Later, the user can search the hard disk for the previously entered dictation and access it for purposes of transcription into a typed document.

^{2/} This is a group 58 telecommunications FSS contract.

non-mandatory FSS contract for approximately \$77,500.^{3/} After reviewing the offers and operational systems at various VA sites, VA found the two systems functionally equivalent. On August 21, VA placed an order for this equipment with Dictaphone on the basis of Dictaphone's lower price.

On August 24, Lanier filed an agency-level protest contending that Dictaphone's proposed system did not meet the CBD notice's requirements for specific capabilities and equipment. On August 27, VA denied Lanier's protest. On August 31, Lanier protested to our Office.

Lanier challenges VA's determination that Dictaphone's equipment is the functional equivalent of the system listed in the CBD notice. Lanier argues the Dictaphone system lacks the capabilities provided by the following equipment listed in the CBD: (1) select dictate stations, (2) uninterrupted power supply (UPS), (3) intercom station, and (4) re-record module. Lanier argues alternatively, that either: (1) the CBD notice is an accurate reflection of VA's minimum needs and Dictaphone did not provide the functionally equivalent of the CBD-listed equipment, or (2) the CBD notice did not convey to Lanier what was required (either by overstating or understating VA's actual minimum requirement).

The purpose of a CBD notice is to test the market for possible alternatives to an agency's intended purchase from a non-mandatory FSS ADP contract. The market test assures the agency that its needs will be met at the lowest overall cost if it proceeds with a schedule purchase. As in a formal solicitation, the agency is required to state its requirements by accurately describing the equipment--including the specific make and model--to be ordered. Federal Information Resources Management Regulation (FIRMR) § 201-40.008(b)(2)(v) (1990); see Racal-Milgo, 66 Comp. Gen. 430 (1987), 87-1 CPD ¶ 472 (an agency has the duty to make its minimum needs clear to potential vendors in order to assure that available alternatives are brought to the agency's attention). Where the CBD notice announces the intent to purchase a specific make and model (i.e., brand name product), the agency should inform offerors of the item's salient characteristics, that is those characteristics essential to the government, against which it intends to judge whether an alternative product is functionally equivalent to the brand name product. Solbourne Computer, Inc., B-237759, Mar. 23, 1990, 90-1 CPD ¶ 323.

^{3/} Apparently this was the only FSS vendor who responded to the CBD notice.

The listing of an FSS vendor's stock number in a CBD notice does not transform all of the equipment's functional capabilities into salient characteristics that an alternative source must address in order to meet the agency's minimum needs. See AZTEK, Inc., B-236612, Dec. 6, 1989, 89-2 CPD ¶ 521. In this regard, the CBD notice's requirements are applied so as to increase competition, not to diminish it. Thus, in considering responses to the CBD notice, an agency cannot reject alternative items for failing to meet unstated features of the CBD-listed items, and, absent any listed salient characteristics regarding a particular technology, an alternate source need only propose functionally equivalent equipment even though it may not contain features of the product synopsis in the CBD. See AZTEK, Inc., B-236612, supra; Solbourne Computer, Inc., B-237759, supra.

An agency enjoys significant latitude in deciding to consider, without further notice or written amendment of the CBD notice, offers from alternate FSS contractors. See FIRM § 201-40.008(c). Indeed, FIRM § 201-40.008(c)(2)(ii) permits an agency to accept the offer of any responding FSS contractor if it is the lowest cost alternative to meeting the agency's requirements. In deciding whether the agency's determination to purchase from an alternative FSS vendor is reasonable, we will examine the record to see if the alternative vendor's offered product was reasonably found to meet the agency's requirements, as set forth in the CBD, and whether the CBD notice prejudicially misled the vendor of the CBD-listed equipment or other vendors as to the nature of the government's minimum needs. See AZTEK, Inc., B-236612, supra.

Here, we find the CBD notice's description of the agency's minimum needs was appropriate, since it clearly disclosed the essential requirements of a digital dictation system to potential vendors.^{4/} We think Lanier's objection to VA's

4/ The record shows that the Wichita Medical Center wanted to replace an existing Lanier cassette dictation system with new digital dictation equipment for the following reasons:

(1) to allow users to search for, and listen to, previously recorded dictation, and insert new amending dictation at specific points in existing dictation;

(2) to save the time previously spent "housekeeping" cassette tapes (i.e., logging, reviewing, erasing, and rewinding);

(3) to increase dictation security by providing central storage of dictation and a means of limiting access to

(continued...)

technical evaluation of Dictaphone's equipment results from Lanier reading more into the CBD notice than VA actually published. In effect, Lanier read phantom salient characteristics descriptive of its VoiceWriter 1600 system's functional characteristics into the CBD notice. Thus, Lanier interpreted the CBD notice as calling for:

Six-Select Dictate Stations--to mean that a functionally equivalent product must have a manual switching device on each dictate station allowing the user to switch between the six communication channels attached to the digital recorder's six communications ports;

UPS--to mean that a functionally equivalent product must allow the entire digital dictation system to remain operable in the event of a power outage;

Intercom Station--to mean that a functionally equivalent product must have a dedicated intercom station that would reside next to the system administrator's terminal and allow conversation with any one of the 16 users simultaneously dictating or transcribing on the system; and

Re-Record Module--to mean that a functionally equivalent product would allow the user to download dictation automatically from the digital recorder to a cassette tapebank.

The CBD notice does not support Lanier's interpretation so far as the equipment protested here is concerned. Indeed, the record indicates that VA intentionally avoided the use of

4/(...continued)
stored dictation;

(4) to improve the management of stored dictation by software tracking of each piece of dictation;

(5) to reduce the need to record information in longhand by providing greater access to dictation facilities; and

(6) to reduce the time spent physically transporting handwritten documents from their source to a typist for transcription.

salient characteristics.^{5/} With two exceptions (the dictate station and the UPS), the CBD notice is silent with respect to the salient characteristics for the listed equipment in question.

On its face, the CBD notice names two salient characteristics for the dictate stations by its designations as "6-Select Stations W/ID Pad." First, the requirement for an "ID Pad"--a key-pad for entering identification numbers--is a salient characteristic; however, this is not relevant to this protest since it is not argued that the Dictaphone equipment lacks an ID Pad.

Second, the designation "6-select" can be viewed as a salient characteristic descriptive of a particular capability in a hard-wired dictate station. Lanier advises that "the term 'blank-select,' be it 4-select or 8-select, is a generic term used in the dictation industry." Under this usage "6-select" refers to dictate stations that allow the user to alter-natively access, or select, at least six different communication ports on the digital recorder.

The record shows that Lanier's design approach using dedicated hard-wire communication channels requires some sort of manual switching device if a user trying to address one of the six available dictation ports discovers that it is "busy" and wants to try another port. On the other hand, Dictaphone's design can accommodate the simultaneous access to up to 12 ports by automatically routing the user to a free port if one exists. Thus, Dictaphone's lower priced system with automatic switching was functionally equivalent to Lanier's specified select station.

Moreover VA admits, in its conference comments, that it "incorrectly characterized the 'six select station' as a Lanier trade name rather than a salient characteristic." This misunderstanding was apparently based on discussions with Lanier prior to the issuance of the CBD which led VA to believe that the term was not descriptive of a salient characteristic of the dictate stations, but was how Lanier referred to its dictate stations. Under the circumstances, we see no basis to object to VA's determination that the

^{5/} As we noted above, VA discussed its need for a digital system with a Lanier representative and reviewed detailed technical specifications for a Lanier system before deciding what equipment to list in the CBD notice. Lanier's specifications offered numerous capabilities that VA could have designated as salient characteristics had VA thought it required them to address its requirements.

Dictaphone dictate stations are functionally equivalent to Lanier's.

Concerning the UPS, the CBD notice specified a 350 VA (volt-ampere) capacity as a salient characteristic. Dictaphone provided a UPS with a substantially greater capacity--2KVA (kilovolt-ampere).^{6/} Generally, a UPS can perform two functions: (1) it can power an entire system--the computer (digital recorder) and its peripherals (dictate and transcribe stations); or (2) more commonly, it can power the computer--to preserve volatile memory, that may be lost if the power is turned off--and the monitor long enough to let the user save any work in progress to nonvolatile storage (e.g., the computer's hard disk).

The record does not support Lanier's contention that the UPS called for in the CBD notice was intended to support the hospital's entire dictation system--the digital recorder and its console, dictate stations and transcribe stations--during a brief power outage (i.e., no longer than 15 seconds).^{7/} Instead, the record indicates that the UPS was listed for the more customary purpose of supplying emergency power to the monitor associated with the digital recorder's console.^{8/} Dictaphone's larger UPS provides 45 minutes of power to the monitor and digital recorder during which VA may gracefully suspend system operations.

^{6/} A unit of measure a thousand times greater than a volt-ampere.

^{7/} Lanier advises that its dictate and transcribe stations are powered through the main digital recorder which has an internal UPS that furnishes a 15 second power supply--a sufficient interval to allow a hospital's emergency power to be brought on line during a power outage.


^{8/} The agency listed the UPS in the CBD notice because without it Lanier's system lacked a means of providing power to the monitor during an outage, and, consequently, the user could not see what was happening as he or she proceeded through a system shutdown. Lanier's internal UPS did not provide power to the monitor. Since the CBD notice made no mention of either the purpose for the UPS, or providing emergency power to the entire system, we think it clear that a functionally equivalent UPS need only power the digital recorder and the monitor, notwithstanding Lanier's ability to power the digital recorder with its internal UPS.

The CBD notice also calls for a single intercom station. Since the notion of an intercom or intercommunications system connotes two-way verbal communication, it is apparent that the single intercom communicates in some way with either the dictate or transcribe stations, or both. Apparently, Lanier's console lacks a built-in intercom. Lanier meets the need for the console's operator to talk to users at remote dictate and transcribe stations with a single intercom located at the console. VA reports that Dictaphone did not offer a single intercom station because any of the Dictaphone stations including the digital recorder's console can double as an intercom. Lanier argues that because its separate intercom allows 16 simultaneous users and the intercom function while Dictaphone's configuration allows the simultaneous use of only 15 users and the intercom, Lanier's intercom is functionally superior to Dictaphone's. Dictaphone admits that when in use, its intercom operates on 1 of the 16 channels, but points out that "this is not a disadvantage because a dictator or transcriber would be incapable of talking with the supervisor over the intercom while simultaneously continuing to dictate or transcribe." Thus, VA's determination that the Dictaphone equipment is functionally equivalent to Lanier's equipment in this respect is reasonable since Dictaphone's system provides the intercom capability and the CBD states no requirement of the degree of simultaneous use.

The CBD notice also calls for a re-record module. This is an interface or linking device used to transfer data from the digital recorder's hard disk to a separate analog tape recorder for storage. The particular re-record module required depends upon the type of analog tape recorder receiving the data. The CBD notice only sought the re-record module and did not require analog tape recorders. Lanier argues that Dictaphone's re-record module is not functionally equivalent because it will not download to VA's existing Lanier tapebank. Lanier's re-record module is compatible with the Lanier tapebank allowing the user to download dictation automatically from the digital recorder to the tapebank. The Dictaphone re-record module will do the same with a Dictaphone analog tape recorder, although not with the Lanier tapebank. VA reports that its Lanier tapebank is not germane to the issue of the functional equivalence, since VA will be disposing of the tapebank when it replaces its current analog central dictation system with the digital system. Inasmuch as compatibility with specified analog tape recorders is not an announced salient characteristic of the re-record module and because Dictaphone's re-record module will work with Dictaphone's analog tape recorder should VA acquire one in the future, we think VA properly found it functionally equivalent to the Lanier re-record module that operates with Lanier's tapebank.

Thus, Dictaphone's proposed equipment was reasonably found capable of performing the same functions as the equipment named in the CBD notice. The record does not indicate that Lanier was misled as to the nature of the government's needs so as to deprive it of the opportunity to compete on an equal basis with Dictaphone, particularly since it appears that Dictaphone offered a superior system at a lower price.

The protest is denied.


for James F. Hinchman
General Counsel